

**Department of Community Planning and Economic Development – Planning Division**  
Conditional Use Permit, Variance  
BZZ-2173

**Date:** February 7, 2005

**Applicant:** Thomas L. Jones

**Address of Property:** 5101 France Avenue

**Project Name:** 5101 France Avenue

**Contact Person and Phone:** P. Cory Peterson, 612/203-0099

**Planning Staff and Phone:** Fred Neet, 612/673-3242

**Date Application Deemed Complete:** January 12, 2005

**End of 60-Day Decision Period:** March 13, 2005

**Ward:** 13 **Neighborhood Organization:** Fulton Neighborhood Association

**Existing Zoning:** OR1

**Zoning Plate Number:** 35

**Proposed Use:** office building

**Concurrent Review:** Conditional Use Permit to allow an office use in the OR1 district, and a Variance to allow a 174 square foot deck within the corner side yard.

**Applicable zoning code provisions:** Chapter 525, Article VII, Conditional Use Permits; Chapter 525, Article IX Variances, Specifically Section 525.520(1) “to vary the yard requirements, including permitted obstructions into required yards not allowed by the applicable regulations.”

**Background:** The applicant proposes to convert the property from a retail use, which has grandfathered rights, to an office use, which requires a conditional use permit in the OR1 district. The building was originally constructed in 1943 as a single-family residence, zoned R1A. The property was rezoned B2-1 in 1976 (P-307) to permit a gift shop.

The applicant also requests a variance to permit a deck obstruction larger than 50 square feet in the corner side yard. The total square footage of the proposed deck which would wrap around the rear of the structure is 174 square feet. Only 4 feet of the 6-foot wide deck intrudes onto the 10-foot corner side yard for a length of 21 feet, for a total obstruction of 84 square feet. However, the total square footage (174) is typically referenced for a yard variance to the permitted deck obstruction.

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Photographs and the site plan show an existing one-story alcove toward the front of the building which extends over 3 feet, for a length of 9.3 feet, into the required corner side yard.

The zoning supervisor confirms that the monument sign on the lot has grandfathered rights. The lot to the south, zoned R1A, received a conditional use permit for a transitional parking lot in 1996 (C-1768). The zoning supervisor further confirms that the 6-foot screen fence for the transitional parking lot, adjacent to a residential front yard, also has grandfathered rights.

Fulton and the adjoining Edina neighborhoods are very stable. 50<sup>th</sup> and France is the center of a designated Activity Center which attracts visitors from throughout the region and accommodates medium- and even high-density commercial and residential uses. The City constructed a major parking lot ½ block to the north on Ewing Avenue to accommodate the commercial volume. The large buildings to the west across France Avenue are condominiums and a bank. Retail is to the north across 51<sup>st</sup> Street, an extension of the Activity Center. Single family homes are to the south and east. France Avenue is a County State Aid Highway (#31) with traffic in excess of 12,000 vehicles per day at 51<sup>st</sup> Street and transit service with 20-30 minute headways throughout the day.

**Findings Required by the Minneapolis Zoning Code:**

The Community Planning and Economic Development Planning Division has analyzed the application and from the findings above concludes that the establishment, maintenance, or operation of the proposed conditional use:

**1. Will not be detrimental to or endanger the public health, safety, comfort or general welfare.**

The small 3100 square foot office use (two levels, plus basement) should not affect these factors.

**2. Will not be injurious to the use and enjoyment of other property in the vicinity and will not impede the normal or orderly development and improvement of surrounding property for uses permitted in the district.**

Only interior modifications are proposed unless a deck variance is granted. The public appearance of the structure, including extensive landscaping, will otherwise remain the same. The office use could be considered a transition between the single family districts to the south and east and the retail use to the north (and the larger buildings to the west in Edina).

**3. Adequate utilities, access roads, drainage, necessary facilities or other measures, have been or will be provided.**

Public and private infrastructure is in place.

**4. Adequate measures have been or will be provided to minimize traffic congestion in the public streets.**

Adequate parking is existing, and no change is proposed for the accessory parking lot.

**5. Is consistent with the applicable policies of the comprehensive plan.**

The most relevant policies of The Minneapolis Plan include:

- 2.8 Minneapolis will develop the existing economic base by emphasizing business retention and expansion.
- 4.1 Minneapolis will encourage reinvestment along major urban corridors as a way of promoting growth in all neighborhoods.
- 4.4 Minneapolis will continue to provide a wide range of goods and services for city residents, to promote employment opportunities, to encourage the use and adaptive reuse of existing commercial buildings, and to maintain and improve compatibility with surrounding areas.
- 4.7 Minneapolis will identify and support Activity Centers by preserving the mix and intensity of land uses and enhancing the design features of each area that give it a unique and urban character.
- 9.10 Minneapolis will support efforts that recognize both the increased visibility and importance of corner properties and the role of gateways in enhancing traditional neighborhood character.
- 9.11 Minneapolis will support urban design standards that emphasize a traditional urban form in commercial areas.
- 9.12 Minneapolis will promote design solutions for automobile parking facilities that reflect principles of traditional urban form.

The parking lot is extensively landscaped and screened from residential properties and the public right-of-way.

- 9.15 Minneapolis will protect residential areas from the negative impact of non-residential uses by providing appropriate transitions.

**Required Findings for a Variance** to allow deck larger than 50 square feet as an obstruction in a required yard.

**1. The property cannot be put to a reasonable use under the conditions allowed and strict adherence to the regulations of this zoning ordinance would cause undue hardship.**

A side-rear deck, like a veranda without a roof, is a reasonable addition to a structure with a residential appearance. The variance is only required because the deck must exceed 50 square feet to extend from an entry to the rear of the structure. The outside stairs to this entry are to be removed. Otherwise, a new interior entry to the deck, adjacent to an interior stairwell, could be considered a particular hardship.

**2. The circumstances are unique to the parcel of land for which the variance is sought and have not been created by any persons presently having an interest in the property. Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of the ordinance.**

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The proposed deck replaces an exterior stairway which extends more than 12 feet from the first floor side entry to the public sidewalk. This stairway formerly connected to an apartment. An existing one-level, ground-level alcove also extends into the required yard, and is a mitigating condition.

- 3. The granting of the variance will be in keeping with the spirit and intent of the ordinance and will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity.**

The proposed deck extends only 4 feet into the corner side yard, which is permitted. The corner side yard is compromised already by a one-story alcove to the west, extending 3.2 feet into the yard. To the east of the proposed deck, in the corner side yard, are a retaining wall adjacent to the sidewalk, a driveway, a row of evergreens, and a 6-foot solid fence, all of which are permitted. The proposed deck is above the sidewalk level. In addition to the positive business purpose of outdoor interactions, the applicant states that aesthetics is the primary purpose for the deck. The deck would also face a commercial area which is an Activity Center.

- 4. The proposed variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or be detrimental to the public welfare or endanger the public safety.**

The proposed deck does not affect these factors.

### **RECOMMENDATIONS**

#### **Recommendation of the Department of Community Planning and Economic Development – Planning Division for the conditional use permit:**

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **approve** the conditional use permit to allow office uses in the OR1 district at 5101 France Avenue.

#### **Recommendation of the Department of Community Planning and Economic Development – Planning Division for the variance:**

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **approve** the variance for a 174 square foot deck in and adjacent to the corner side yard at 5101 France Avenue, subject to the following condition:

1. No more than 84 square feet of the deck shall encroach into the required yard.

#### **Attachments:** Statements of use

Zoning map

Plans

Photos